

Opinion No. 57-38

March 1, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Honorable Matias L. Chacon, Honorable Mack Easley, House of Representatives, Santa Fe, New Mexico

QUESTIONS

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The number of votes necessary to recall a bill from committee after it has been referred thereto.

CONCLUSION

By a majority vote of all members elected to the House.

OPINION

ANALYSIS

House Rule No. 38 (g) reads as follows:

"A committee holding a bill for a fifteen-day period must notify the house the reason for the delay in reporting the bill. When the house is notified that a bill has remained in committee fourteen days, any house member can move that the bill be withdrawn from that committee and placed in another committee or go on the house calendar without committee recommendations, in accordance with house rule 52."

and House Rule No. 52 reads as follows:

"No bill, resolution or memorial shall be recalled after its reference to a committee except upon a majority vote of all members elected to the house."

Specifically, the issue is whether a majority vote of the entire membership is sufficient to withdraw a bill from committee before notice is given in accordance with Rule 38 (g), or does such procedure amount to taking up a question out of proper order, thus requiring a two-thirds vote?

In our opinion, a majority vote of the entire membership is sufficient. We reason as follows: Reading Rule 38 in its entirety, we find that it imposes certain duties, either upon the committee chairmen, the committees themselves, or possibly both. Thus, Rule

38 (g) imposes a duty on a committee holding a bill fifteen days to give notice of the reasons for the delay. But we find nothing in Rule 38 (g) to indicate that reference of a bill to committee means that before the notice is given, it can only be recalled upon two-thirds vote. We construe Rule 38 (g) to be restricted to the function of providing when notice of delay must be given.

It is true that the following language is used: "When the house is notified that a bill has remained in committee fourteen days . . .", any house member can move for withdrawal from committee ". . . in accordance with house rule 52." We do not believe, however, that the fourteen days must elapse before a bill can be withdrawn except upon two-thirds vote. Standing alone, the language might at first blush so indicate. But it must be kept in mind that Rule 38 is restricted to certain duties prescribed, and paragraph (g) to the duty of giving notice.

Or to reason another way, suppose the bill were held beyond the prescribed time, but the committee breached its duty and gave no notice. Would the language beginning with "When the house is notified . . ." precluded further action by the House unless a two-thirds majority could be mustered? To ask the question is to answer it. The language last above quoted is not a condition precedent further action under Rule 52.

Furthermore, the last clause in Rule 38 (g) provides for withdrawal from committee in ". . . accordance with house rule 52." Turning to Rule 52, we find that it simply provides for recall from committee upon a majority vote of all members elected to the House. This, whether or not the fourteen day period has expired, or whether or not notice has been given. Your attention is called to the fact that it is Rule 52 which prescribes the vote necessary for recall and that Rule 38 (g) does not purport to touch upon this subject.

In short, it is our opinion that Rule 52 is the rule which governs recall of a bill from committee, and is not limited by Rule 38 (g).

We wish to state that we entertain some doubts, if not as to the propriety of rendering this opinion, then as to its binding effect upon the House. Nevertheless, we are pleased to render the same for whatever assistance it may be.

We trust this fully answers your inquiry.